

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
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**In re NURTURE BABY FOOD
LITIGATION**

This document relates to:

ALL ACTIONS

1:21-cv-01217-MKV
**ORDER DENYING WITHOUT
PREJUDICE MOTION TO DISMISS,
MOTION TO STRIKE, AND MOTIONS
FOR ORAL ARGUMENT**

MARY KAY VYSKOCIL, United States District Judge:

Plaintiffs bring this consolidated case individually and on behalf of all others similarly situated alleging that Defendant Nurture, Inc. failed to properly disclose the presence of heavy metals and other contaminants in its baby food, in violation of consumer protection statutes and the common law in the states in which Plaintiffs reside. [See ECF No. 157].

The Court, as it is independently obligated to do, has assessed whether it has subject matter jurisdiction in connection with this action. *See Henderson v. Shinseki*, 562 U.S. 428, 434 (2011); *In re Tronox Inc.*, 855 F.3d 84, 95 (2d Cir. 2017); *see e.g., Digitel, Inc. v. MCI Worldcom, Inc.*, 239 F.3d 187, 189–90 (2d Cir. 2001) (affirming the district court’s *sua sponte* dismissal on subject matter jurisdiction grounds); *Curcio v. Abrams*, No. 22-693, 2023 WL 31183, at *2 (2d Cir. Jan. 4, 2023) (summary order) (affirming the district court’s *sua sponte* dismissal).

Upon review, Defendant’s motion to dismiss Plaintiffs’ Consolidated Class Action Complaint, Plaintiffs’ motion to strike the Declaration of Nega Beru, and the motions for oral argument associated therewith, are hereby DENIED *without prejudice* based on the apparent lack of subject matter jurisdiction as pleaded in the Consolidated Class Action Complaint. [ECF Nos. 162, 166, 174, 178; *see* ECF No. 157]. The Court will simultaneously enter a scheduling order to

afford the parties an opportunity to be heard with respect to the existence of subject matter jurisdiction.

The Clerk of Court is respectfully requested to close the motions pending at docket entries 162, 166, 174, and 178.

SO ORDERED.

Date: March 27, 2024
New York, NY

Mary Kay Vyskocil
MARY KAY VYSKOCIL
United States District Judge